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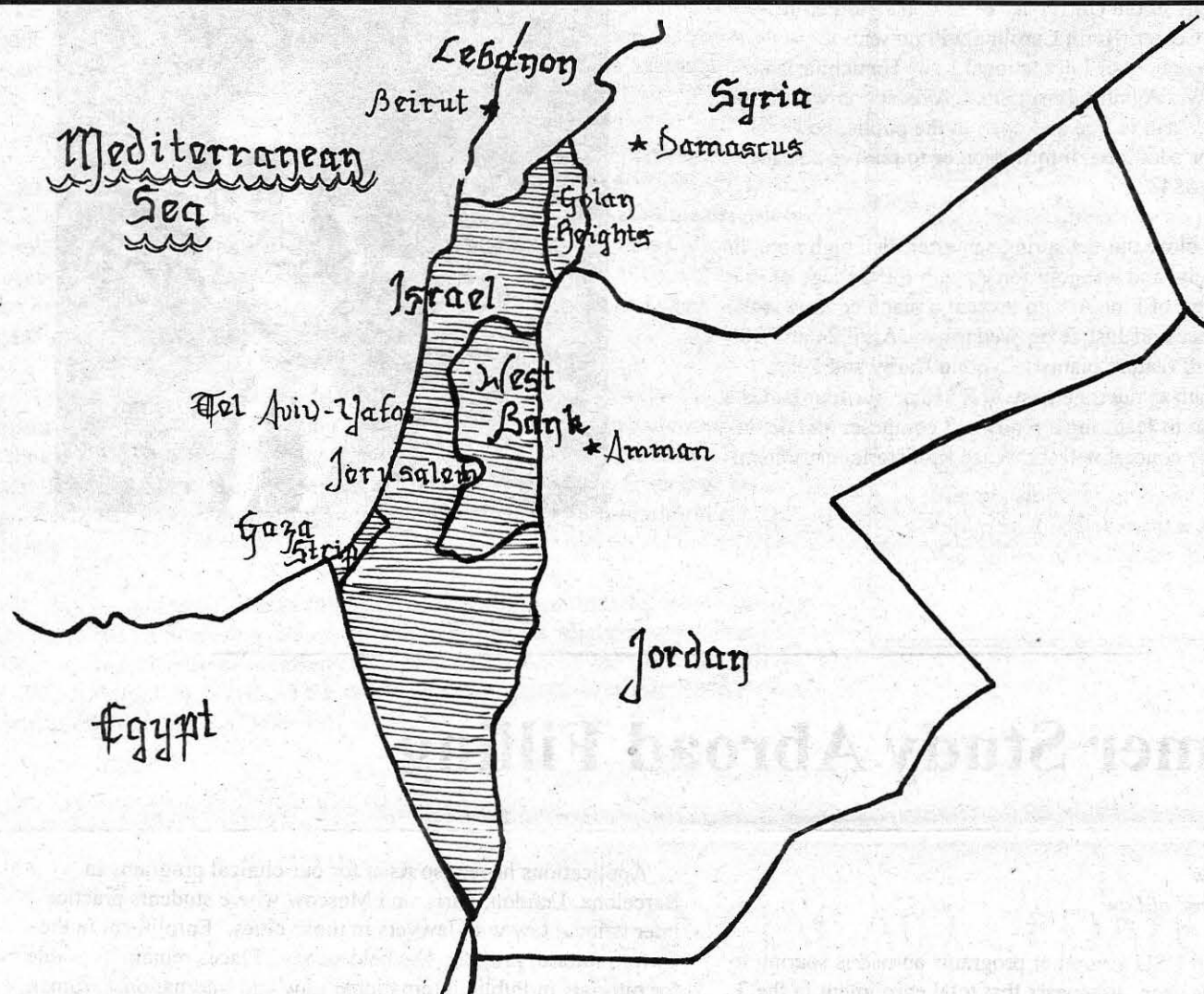
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MOTIONS

University of San Diego School of Law

Volume 37, Issue 7

April 2002



Latino Attorneys Targeted by Hate Mail and Anthrax Hoax

By Tom Ladegaard
Section Editor

According to *La Prensa San Diego*, a local Hispanic newspaper, more than 40 Latino attorneys and community groups received form hate letters containing a white powdery substance last month, an apparent anthrax hoax. It was a one-page form letter that contained a barrage of stereotypes and racial slurs (e.g., calling Latinos drug users and prostitutes), and claiming that everything Latinos have is due to the generosity and leadership of whites. Tests have confirmed that the substance is not anthrax.

The letter was signed by a self-proclaimed Indian immigrant, an apparent scapegoat, because the FBI has confirmed that the woman with the name used is not a suspect. She tearfully denied that she was the author.

The FBI is investigating this as a hate crime. All the letters had no return address, and all were postmarked from Oakland.

One recipient of the letter was Christopher Arriola, state president of La Raza Lawyers Association and a Santa Clara County Deputy District Attorney. He did not open his letter because he felt granules inside. Arriola has been serving as a clearinghouse for all of the letters received. He said some good can come from this incident, that this "has galvanized the community."

According to San Diego County Deputy District Attorney Hector Jimenez, no such letters were sent to San Diego attorneys; they were concentrated in the Bay Area. Jimenez, who prosecutes hate crimes and is a member of the San Diego chapter of La Raza, said that local law enforcement and the FBI have dual jurisdiction over this matter. Both will participate in the investigation, and whichever unit has the "biggest hammer" will do the actual prosecution. Should the prosecution be handled federally, then a U.S. Attorney from the Civil Rights Division would conduct it. Applicable federal laws include 18 U.S.C. Section 214 (conspiracy against civil rights) and Section 245 — intimidating or interfering with federally protected activities, namely, enjoying employment.

International law aspects of the Israeli-Arab conflict

By Carl A. Auerbach
Professor of Law

On March 28, 2002, the Council of the 22-member League of Arab States at the summit level issued its "Beirut Declaration" endorsing the proposal of Crown Prince Abdullah of Saudi Arabia for a just and comprehensive peace in the Middle East. The Declaration describes the proposal as "calling for full Israeli withdrawal from all the Arab territories occupied since June 1967, in implementation of Security Council Resolutions 242 and 338, reaffirmed by the Madrid Conference of 1991 and the land for peace principle, and Israel's acceptance of an independent Palestinian State, with East Jerusalem as its capital, in return for the establishment of normal relations in the context of a comprehensive peace with Israel."

Accepting this proposal, the Council called upon Israel to affirm: (1) full Israeli withdrawal from all the territories occupied since 1967, including the Syrian Golan Heights to the lines of June 4, 1967 as well as the remaining occupied Lebanese territories in the south of Lebanon; (2) achievement of a just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194; and (3) the acceptance of the establishment of a sovereign, inde-

pendent Palestinian state on the Palestinian territories occupied since the 4th of June, 1967, in the West Bank and Gaza strip, with East Jerusalem as its capital. Crown Prince Abdullah's proposal did not mention General Assembly Resolution 194.

If the proposal of Crown Prince Abdullah accepted by the Beirut Declaration views U.N. Security Council Resolutions 242 and 338 as calling for "full Israeli withdrawal from all the Arab territories occupied since June 1967," it is mistaken. The applicable international law can best be understood in the light of the history of the Arab-Israeli conflict in the region.

After World War I

In the Treaty of Peace with Turkey following World War I, Turkey renounced sovereignty over the Arab-populated areas of the Middle East, including Palestine which then consisted of Israel, the West Bank, Jordan, and the Golan Heights. But the Treaty did not indicate to whom sovereign title over "Palestine" would be transferred. In 1922, the League of Nations gave Great Britain the mandate to govern "Palestine."

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The Dean's Corner

From the Dean's Corner:

T.S. Eliot's observation that "April is the cruellest month, mixing memory with desire," is not without merit. Spring break is now behind us, but many classes, events, and activities lie ahead before we begin finals and don our gowns for commencement.

The Institute for Law and Philosophy will present its second Public Lecture of the semester on Wednesday, April 17 at 6:00 p.m. in the Theater of the Kroc Institute for Peace and Justice. Allen Buchanan, Professor of Philosophy at the University of Arizona and Fellow, National Humanities Center, North Carolina will present "Challenging the Constraints of International Law: Humanitarian Intervention and the War Against Terrorism." A reception will follow in the Rotunda. This event is free and open to the public, however, seating is limited. For additional information or to reserve a space, please call (619) 260-6848.

The Law School will close out the spring semester on a high note, literally if not figuratively, and will join forces with the College of Arts & Sciences Department of Fine Arts to present a piano concert at the Kroc Institute for Peace and Justice on Wednesday, April 24 at 7:30 p.m. The program will feature pianists Cynthia Darby and Peter Gach playing the Schubert duet, Fantasy in F Minor, for four hands at one piano. In addition to featuring a renowned composer and distinguished musicians, the concert will showcase an historic instrument:

the first full-size concert grand piano manufactured by Steinway & Sons in New York. This remarkable instrument was donated to the Law School by Visiting Professor Michael Devitt in honor of his father, Frank Mascari. A reception will follow the concert in the Institute Rotunda.

Dean Daniel B. Rodriguez



Summer Study Abroad Filling

By Bert Lazerow
Professor of Law

Enrollment in USD's summer programs abroad is soaring to record levels this year. It appears that total enrollment in the 7 European programs of 2002 will easily eclipse 2001's record of 347 students. Current registration stands at 424, up 34% from last year at this time.

The most seriously impacted program is Barcelona, which has reached its enrollment limits and has been closed. Other programs likely to close in the near future are Florence, London and possibly Paris. Sufficient space remains in Dublin, Oxford and Russia so that none of those programs is likely to be closed. Indeed, Russia is the only program with a slight decline in enrollment.

Applications have also risen for our clinical programs in Barcelona, London, Paris, and Moscow where students practice international law with lawyers in those cities. Enrollment in the Oxford tutorial program has held steady. Places remain available for tutorials in Public International Law and International Human Rights.

The increase in enrollment is a bit of a surprise after the events of September 11. That has apparently been offset by the inexpensive trans-Atlantic airfares available, the low tuition, and the paucity of meaningful summer legal jobs.

ATTENTION MAY 2002 GRADUATES

Applications for the Owen Stark Heriot Award are being accepted for an "outstanding student who is a veteran or current member of the armed forces."

Are you in the upper 15% of the class? Can you verify your armed forces status?

The following criteria will also be considered: Do you play a musical instrument? Are you involved with Photography? Are you a first-generation college graduate?

Please complete an application for this \$1,000.00 award no later than Friday, May 1st. Give to Assistant Dean Carrie R. Wilson by mail, by e-mail to carrie@sandiego.edu, by delivery to her office in Room 206 or by placing it in her hanging file in the student mailboxes under "Wilson, Carrie".

SUMMER SESSION 2002

UPPER CLASS AND GRADUATE LAW REGISTRATION INSTRUCTIONS

Step 1. (Visiting J.D. and New LL.M. Students Only) Submit a completed application for admission, supporting documentation, and the \$50 application fee to the Law School Admissions Office or Law School Graduate Programs Office, as appropriate. Once admitted, new LL.M. students only must submit a non-refundable \$200 deposit to the Graduate Programs Office, noting program deposit on your check.

Step 2. Check with the Records Office for space availability in courses. Registration is on a first-come, first-served basis. Courses, clinics and internships with insufficient enrollment by Monday, May 1st, are subject to cancellation. **U.S.D. J.D. STUDENTS PLEASE NOTE:** Academic Rule II.B.2. provides that: A full-time student may not take in excess of 7 credits in the San Diego summer session. If you wish to use summer school to accelerate your graduation from U.S.D., see Assistant Dean Carrie Wilson.

Step 3. Pay a **\$100 NON-REFUNDABLE** summer school tuition deposit, noting **summer tuition deposit** on your check. Tuition is \$905 per credit. Visiting J.D. and new LL.M. students who are registering from out-of-town should mail the deposit to the Law School Admissions Office or Law School Graduate Programs Office, as appropriate. All others must pay this fee at the Office of Student Accounts either in person or by mail, making sure that they use their University of San Diego School of Law I.D. number at the time of payment.

Step 4. Bring the receipt from Student Accounts to the Records Office and complete a registration form. Accepted visiting students and new LL.M. students who have paid their deposit and are registering from out-of-town may send their completed registration form directly to the Records Office. Approval from Judy Bruner or her designee will be required before any new LL.M. student's registration form can be processed.

Step 5. Pay the tuition balance in full or submit appropriate financial aid documentation to the Office of Student Accounts by 4:00 p.m., on the appropriate registration deadline. *Payments must be received (not just postmarked) by the deadline. (FAILURE TO COMPLETE THIS STEP BY THE DEADLINE WILL RESULT IN A \$60.00 LATE REGISTRATION FEE.)*

IMPORTANT DATES AND DEADLINES FOR UPPER CLASS AND GRADUATE STUDENTS

Monday, June 10*	Upper Class Registration Deadline*
Monday, June 10	Classes begin.
Wednesday, June 12	Last day for 100% tuition refund ¹
Friday, June 14	Last day to register, ² add classes or change to audit; last day for 90% tuition refund. ¹
Wednesday, June 19	Last day for 80% tuition refund ¹
Friday, June 21	Last day for 70% tuition refund ¹
Friday, June 28	Last day for 60% tuition refund ¹
Wednesday, July 3	Last day for 50% tuition refund ¹
Thurs-Fri, July 4-5	Holiday (no classes; offices closed on Thursday)
Wednesday, July 9	Last day for 40% tuition refund ³
Wednesday, July 10	Last day to drop classes
Monday, July 29	Last day of classes; Thursday classes meet
Tuesday, July 30	Study Period
Wed-Sat, Jul 31-Aug 3	Final Examinations

*Registrations for upper class students not cleared in Student Accounts by noon this date incur a \$60 late fee.

¹Minus the \$100 non-refundable deposit.

²Registrations for graduate students not cleared in Student Accounts by 4:00 p.m. this date incur a \$60 late fee.

³No further refunds after this date.

FINANCIAL AID UPDATE

Are you a 1st or 2nd year law student who is currently receiving Financial Aid – scholarships, grants, loans, or workstudy, and are you planning on needing this financial aid for next year (Summer 2002 – Spring 2003)?

If yes, have you filed both the FAFSA and the USD Institutional Financial Aid Applications for 2002-2003? If no, contact the Financial Aid Office immediately because March 1, 2002 was the priority date!!!

Are Graduating in May?

All graduating students who received loan assistance at any time while in attendance at USD School of Law are required by Federal regulation to complete and attend an Exit Counseling session. The entire program is approximately one hour in length. The times and dates are as follows:

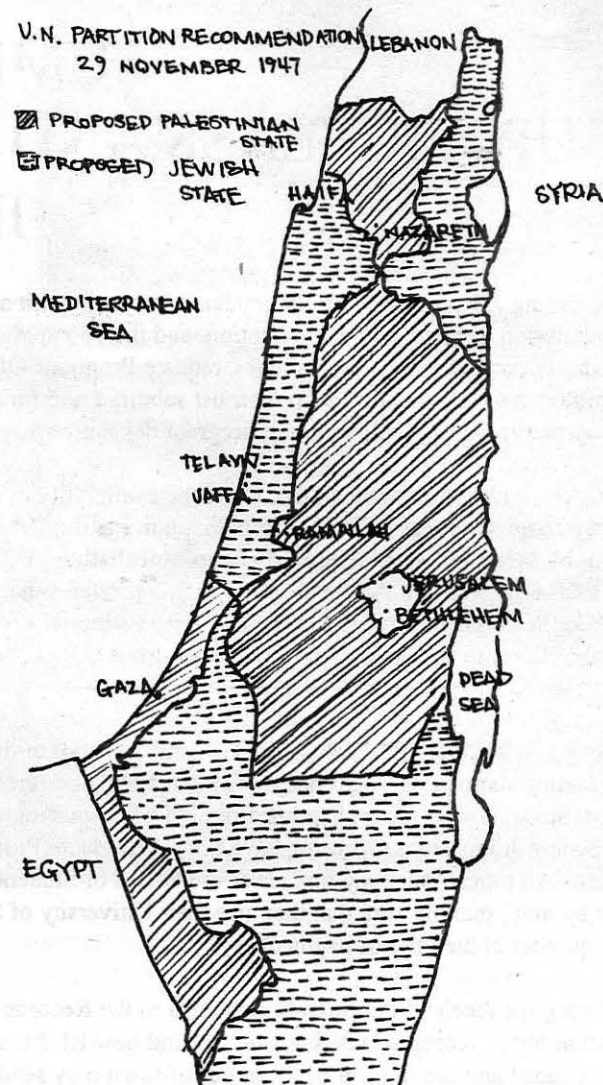
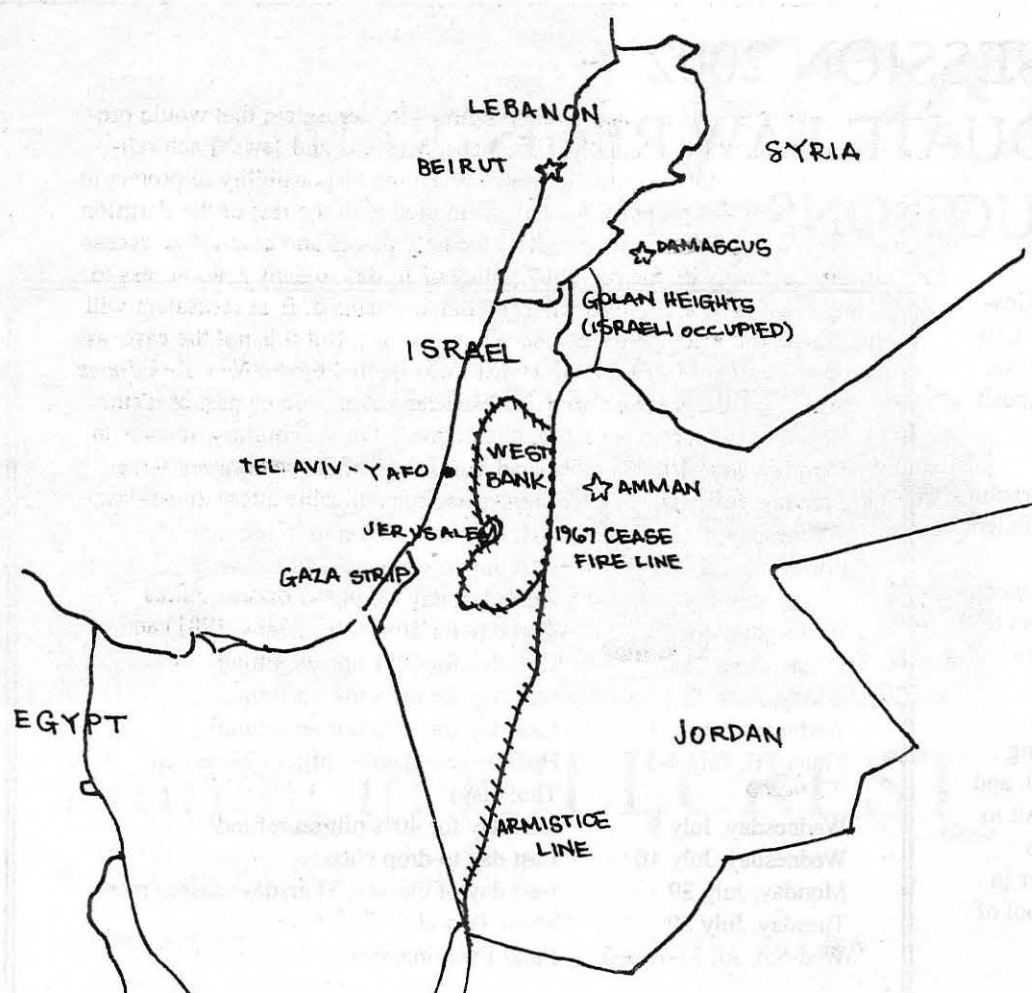
Monday, April 15, 2002	
9:00 a.m.	Warren Hall, Room 2A
11:00 a.m.	Warren Hall, Room 2A
Tuesday, April 16, 2002	
10:00 a.m.	Warren Hall, Room 3B
12:00 p.m.	Warren Hall, Room 3B
4:00 p.m.	Warren Hall, Room 3B
Wednesday, April 17, 2002	
9:00 a.m.	Warren Hall, Room 3B
12:00 p.m.	Warren Hall, Room 3B

Please sign up in the Office of Financial Aid (Warren Hall 203) or call 619-260-4570.

"Can I afford not to take that job" Workshop:

In cooperation with USD's Career Services office and a prominent speaker on career management, the Financial Aid Office is pleased to sponsor a lively presentation on where to live, work and lifestyle transitions once you pass the bar!! Food will be provided. Please sign up now in the Financial Aid Office. The dates and times are as follows:

Tuesday, April 23, 2002	12:00 – 1:00	Warren Hall, Room 3B
Wednesday, April 24, 2002	12:00 – 1:00	Warren Hall, Room 3B



>ISRAELI-ARAB CONFLICT

CONTINUED FROM PAGE 1

In accordance with the Balfour Declaration of 1917, Great Britain officially declared "Palestine" to be the Jewish National Homeland. But it reduced the area of that Homeland when it created the Kingdom of Jordan in that part of "Palestine" east of the Jordan River, confining the Jewish Homeland to the area between the Jordan River and the Mediterranean Sea, including the West Bank—about a fifth of its former size.

United Nations 1947 Plan of Partition fails

In 1947, the General Assembly of the United Nations adopted a Resolution setting forth a Plan of Partition with Economic Union for Palestine. The Plan proposed to divide the Jewish Homeland into Jewish and Arab territories. A Jewish State as well as a new Arab State were to be created. The Plan also envisaged a special international regime for Jerusalem. The Plan was accepted by Israel even though it further reduced the size of the area allotted to it, but the Arab Nations rejected the Plan. If the Partition Plan had been accepted, Israel and the new Arab State would have acquired sovereign titles to their allotted territories. The agreement of the parties, not the General Assembly Resolution, would have given the Partition Plan legal effect.

On May 14, 1948 (the day Britain abandoned its mandate and withdrew from Palestine), Egypt, Iraq, Lebanon, Syria and Saudi Arabia launched an unlawful war of aggression against Israel which was denounced as such by the U.N. Security Council. The Partition Plan was dead. On that same day, Israel declared its independence and referred to the Partition Plan as an acknowledgment of the natural and historic rights of the Jewish people in Palestine.

State of Israel established

Legally, then, Israel stems from her Declaration of Independence, her successful defense in the unlawful war waged against her in 1948 and her establishment of a stable and orderly government in territories, including West Jerusalem, which she then controlled. Her statehood and boundaries were confirmed by her admission to the United Nations in 1949. Israel now has a population of 5.8 million in an area of 12,981 square miles. There are now more than 20 Arab countries with an estimated population of 250 million in an area of about 8,130,000 square miles.

The Palestinian Arabs claimed the right of self-determination for the first time in the 1960s. Prior thereto, Jordan was regarded as the Palestinian State. Indeed, Palestinian Arabs now make up more than 60 percent of the population of Jordan. Neither the League of Nations nor the United Nations in the first two decades of its existence recognized the Palestinian Arabs as comprising a separate national entity. The U.N. General Assembly asserted the existence of such an entity for the first time in 1970 in a Resolution which carried because of the pressure exerted by the Arab oil States in alignment with the Soviet bloc. But no independent Palestinian Arab state has ever in history existed in the territories in question.

International law violated in 1967 and 1973 aggression

Israel was again the victim of unlawful aggression in 1967 (the Six Day War) and 1973 (the Yom Kippur War). The attacks upon Israel in these years violated international law and the U.N. Charter which requires States to refrain from the use or threat of use of force against the territorial integrity or political independence of another State. As a result of the 1967 War, Israel captured the West Bank, Gaza and all of Jerusalem.

Even before the 1967 War, Jordan's occupation of the West Bank and East Jerusalem and Egypt's occupation of Gaza were unlawful because they were the fruit of Jordan's and Egypt's unlawful invasion of Palestine in 1948. After 1967, Jordan and Egypt lost all claim to these territories. Israel's occupation is lawful

because it is the result of self-defense against unlawful aggression.

Current binding international law

Following the 1967 War, the U.N. Security Council adopted Resolution 242 which now represents the binding international law. An effort was made to have Resolution 242 require Israel to withdraw from all the territories it captured in the 1967 War but, after much debate and deliberation, the words "all" and "the" were stricken. Resolution 242 affirms that the U.N. Charter "requires the establishment of a just and lasting peace in the Middle East, which should include the application of both the following principles: (i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict; (ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."

U.N. Security Council Resolution 338, following the 1973 War, reaffirmed Resolution 242. The 1991 Madrid Peace Conference following the Gulf War envisaged that the peace negotiations between Israel and the Palestinians and between Israel and the Arab states would take place on the basis of Resolutions 242 and 338. The U.N. Security Council Resolution 1397 of March 13, 2002, the first ever to explicitly mention a Palestinian Arab State, recalled Resolutions 242 and 338 and affirmed "a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders." The U.N. Security Council Resolution of March 30, 2002, which called upon Israel to withdraw its troops from Palestinian cities, also reaffirmed Resolutions 242 and 338.

The withdrawal expected of Israel, then, is to negotiated lines that would afford security to Israel and be recognized in a treaty of peace.

Acquiring territory by war violates international law

The preamble to Resolution 242 emphasizes "the inadmissibility of the acquisition of territory by war." But surely this means that territory must not be acquired by unlawful force; that is, by a war initiated for the aggressive purpose of acquiring territory. Without this qualification, the principle of international law that no State shall profit from its own wrongdoing would be flouted and aggression would be encouraged. The aggressor would know it risks nothing by its aggression; the territory it may have lost in the attempt will be returned to it. Furthermore, if the hoped-for Treaty of Peace between Israel and the Arab Nations should give Israel some land outside its pre-1967 boundaries, it will not be an acquisition of territory by war but by negotiation in accordance with binding U.N. Security Council Resolutions. These Resolutions, however, limit the territorial adjustments Israel may claim to those compelled by considerations of its security.

Effectiveness of resolution dealing with the Palestinian Refugees

The Beirut Declaration calls upon Israel to affirm the goal of "[a]chievement of a just solution to the Palestinian Refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194" of December 11, 1948. Coming soon after the end of the 1948 War, the principal purpose of the Resolution was to create a Conciliation Commission consisting of France, Turkey and the United States to mediate a peace in Palestine. In setting forth the agenda the Conciliation Commission should pursue, the General Assembly resolved that "the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss

>Continued on next page

> of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible." The Conciliation Commission was instructed "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations."

Resolution 194 itself did not purport to mandate any particular course of action. The Commission reported to the U.N. in 1949 that it did not consider it possible to separate the issue of the right of return "from the rest of the peace negotiations or from the final peace settlement." In a 1950 report, the Commission called attention to possible compensated resettlement of the refugees in the Arab countries.

General Assembly Resolutions like Resolution 194 are not legally binding on the members of the United Nations. Security Council Resolution 242, which is legally binding, does not mention Resolution 194 and does not recognize a right of the Palestinian Arab refugees to return to Israel or to compensation in lieu thereof, but affirms the need to achieve a "just settlement of the refugee problem." Negotiations to achieve a just settlement must take account of the fact that it was Arab aggression that created the problem in the first place and Israel cannot be asked to assume the entire burden of a just settlement. In addition, Resolution 242 makes no distinction between Arab refugees from Palestine and Jewish refugees from Arab countries. Any just settlement would have to consider the claims of 700,000 Jews driven from Arab countries whom Israel assimilated at great cost.

Sharing of East Jerusalem not violation of applicable law

The status of East Jerusalem raises unique issues. The 1947 Partition Plan proposed a "special and separate treatment" of Jerusalem under U.N. control.

It envisaged a "permanent international regime" for Jerusalem that would protect the places regarded as holy by Christians, Muslims and Jews. Each religious faith, for example, would have been given the responsibility to protect its Holy Places. But this proposal for Jerusalem died with the rest of the Partition Plan. Israel has enacted a law to protect the holy places and assure free access to them, in contrast with the pre-1967 policy of Jordan to deny Jews access to their Holy Places in East Jerusalem. The ultimate status of East Jerusalem will be determined in the course of the peace negotiations. But it is not the case, as the Egyptian Foreign Minister Amr Moussa was quoted by the *New York Times* as saying, that a "shared sovereignty" in East Jerusalem, or any part of it (the Old City), is a "departure from international law." On the contrary, if such an arrangement is negotiated and embodied in a Treaty of Peace between Israel and the Arabs, it will be quite consistent with the applicable international law.

* I wish to acknowledge my indebtedness to the following works: Julius Stone, *Israel and Palestine* (The John Hopkins University Press, 1981) and Allan Gerson, *Israel, The West Bank and International Law* (Frank Cass, 1978).

Professor Auerbach has been a Distinguished Professor at the USD School of Law each spring semester since 1985. He graduated from Harvard Law School in 1938. He has served on the National Defense Commission and the Office of Price Administration, served as general counsel of the OPA, taught at the University of Wisconsin Law School from 1947 to 1961, obtained a Fulbright Advanced Research Award at the London School of Economics and Political Science, served as dean of the University of Minnesota Law School for seven years, and has received the prestigious American Bar Foundation Award for research in law and government.

Dog Mauling Convictions: a New California Precedent

By Tom Ladegaard

• Section Editor

Robert Noel and Marjorie Knoller, husband and wife attorneys living in a San Francisco apartment building, owned two Presa Canarios named Bane and Hera. It is alleged that a prison gang known as the Aryan Brotherhood, operating out of Pelican Bay prison, had trained these dogs as killers. On January 26, 2001, as Knoller was returning to her apartment with both dogs, Bane fatally mauled Diane Whipple, a 33 year-old lacrosse coach, in the hallway as she returned home. Whipple's clothes were torn to shreds before she was fatally bitten on her throat.

Officials euthanized Bane immediately after the incident, and Hera was euthanized shortly before trial, after a hearing determined that the dog was too vicious to remain alive. Due to the extensive publicity in San Francisco, the case was tried in Los Angeles. Knoller was convicted of second-degree murder, manslaughter, and owning a mischievous animal. Noel, who was out of town on the date of the incident, was convicted of the latter two charges. A sentencing hearing will occur in May.

One month prior to the incident, Whipple told Smith, her partner, that Bane bit her hand. Smith claimed that this was done in the presence of Noel, who said and did nothing in response. Smith testified that she and Whipple lived in fear of the dogs and their owners during the last month of Whipple's life, and attempted to avoid any contact with them.

In an apparent attempt to dissuade District Attorney Terence Halliman from filing charges against him and his wife, Noel wrote an 18-page letter to Halliman, claiming that Whipple was at fault because she failed to get inside her apartment and shut the door before the attack. In his account of the incident, he said that Bane attacked Whipple because of her perfume, and that the dog dragged Knoller 50 feet across the hallway, after which Knoller threw herself upon Whipple to protect her, sustaining serious injuries in the process. He then alleged that Whipple punched Knoller in the eye, and that Bane attacked in her defense.

Noel went as far as to say that because Whipple was an Olympic athlete, she might have been using steroids, which could have prompted the attack. He encouraged investigators to search Whipple's apartment for any such evidence.

After the attack, Knoller, covered in Whipple's

blood, fumbled around for her keys. It was only because several neighbors heard the attack that 911 was called. A paramedic testified that Knoller seemed "coldly calm," and she commented that she was an EMT and had encountered such gruesome situations.* Although she had received first aid training, she was not an EMT.

The prosecution's case consisted of approximately 30 witnesses who had encountered the dogs and had been frightened by them. The defense's case was largely an attempt to convince the jury that the dogs were not dangerous or vicious animals and therefore they did not know of the animal's dangerous propensities, as Penal Code Section 399 requires. Knoller spent two days on the stand, and Noel did not take the stand in his defense.

Although the case contained enough drama for a motion picture, the following is a brief comment on novel legal issues that the case presented:

Precedent for Dog Owners in California

Knoller's murder conviction is the first of its kind in California. The ramifications run to everyone who owns a potentially vicious animal. Under Section 399 of the California Penal Code, when an owner knows of their animal's "mischievous" propensities, and the owner allows it to roam in public, or if the owner keeps it without ordinary care, and the animal kills any human who took all the precautions one could have taken under the circumstances, the owner is guilty of a felony.

In 1998, a Kansas dog owner was convicted of second-degree murder when her three Rottweilers killed a young boy. Wisconsin prosecutors just announced that they are charging a couple whose dogs killed a young girl with second degree murder.

Out of Court Statements Regarding Witness Veracity

During the course of the trial, defense counsel Nedra Ruiz, in an appearance on Fox News' "On the Record with Greta Van Susteren," commented on the veracity of a prosecution witness. Ruiz claimed that Smith, Whipple's partner, was "exaggerating or lying" about Whipple being previously bitten by Bane, and about their fear of the dogs. When Ruiz was flatly asked whether Smith was lying, she responded in the positive.

A transcript of the tape was sent to San Francisco Superior Court Judge James Warren, who had moved the trial to Los Angeles. Judge Warren had directly ordered the attorneys not to comment on the substance of the trial to the media, and he will hold a hearing in May to determine whether he will sanction Ruiz.

Ruiz responded that she was sorry only that the judge viewed her actions as a violation of the court's order. She also claimed that she was doing nothing more than what prosecutor Halliman had done. A hearing date has already been set for Halliman as well.

Besides the court order, did Ruiz violate a rule of professional conduct? Model Rule 3.6 mandates that a lawyer shall not make an extrajudicial statement if the lawyer knows that it will have a substantial likelihood of materially prejudicing the proceeding. The Rule provides a list of statements the lawyer can make, one of which is information contained in the public record. A lawyer can also make a statement to mitigate recent adverse publicity that has not been initiated by the lawyer or the client. California Rule 5-120 uses almost identical language. Judge Warren said that Ruiz's comments were precisely the type of comments that could infect a jury, should they hear them.

Wrongful Death Suit brought by a Lesbian Partner

Smith, Whipple's lesbian partner, has filed a wrongful death claim. According to the complaint, Smith considered herself to be Whipple's spouse, although California law prevents them from being formally wed. They had exchanged rings and vows in a private ceremony. They had been together for seven years and had a joint bank account and health insurance policy.

Smith was the primary beneficiary under Whipple's will, which was attached to the complaint as an exhibit. The essence of her complaint is that she was a "spouse" for purposes of a wrongful death action.

*All information regarding the case was gleaned from www.courtstv.com

EDITORIALS

SHAPING THE FEDERAL COURTS

By Watson Branch
Section Editor

President Bush's nomination of Charles W. Pickering, Sr., for a seat on the 5th Circuit Court of Appeals was rejected by the Democratic-controlled Senate Judiciary Committee, and the Republicans responded in high dudgeon. Oren Hatch, the ranking Republican member of the Committee, decried the "smear campaign" against Judge Pickering as a "mere warm-up battle for the ideological war" that will break out if and when the President makes a Supreme Court nomination. The President himself declared, "Unfortunately, we are seeing a disturbing pattern where too often judicial nominations are being turned into ideological battles that delay justice and hurt our democracy."

But are ideological considerations necessarily a bad thing in the confirmation process? Or even in the decision-making process of the judges once they have been appointed to seats on the federal bench? In fact, ideology is inescapable in both processes despite disclaimers by the Senators and judges involved.

That ideology, policy, and partisanship determine the outcomes of cases decided by the federal judiciary comes as no surprise to the law students who have spent years reading the judges' opinions. What is surprising is that most of those same judges pretend to be basing their decisions on more objective factors, that is, past authorities manifested in the Constitution, statutes, administrative regulations, and case law. They represent themselves as the vindicators of continuity and consistency in the law, following logic and precedent to ineluctable conclusions. But a close examination of the tortured reasoning in the decisions authored even by the Justices of the

Supreme Court reveals that plain meaning, legislative history, Congressional intent, precedent, and similar "objective" criteria are being disingenuously enlisted in the service of ideological presumptions and preferences. The Justices and the judges on the lower federal courts pay lip service to the ideal of objective or positivist judicial principles, but their decisions are dictated by their personal ideologies.

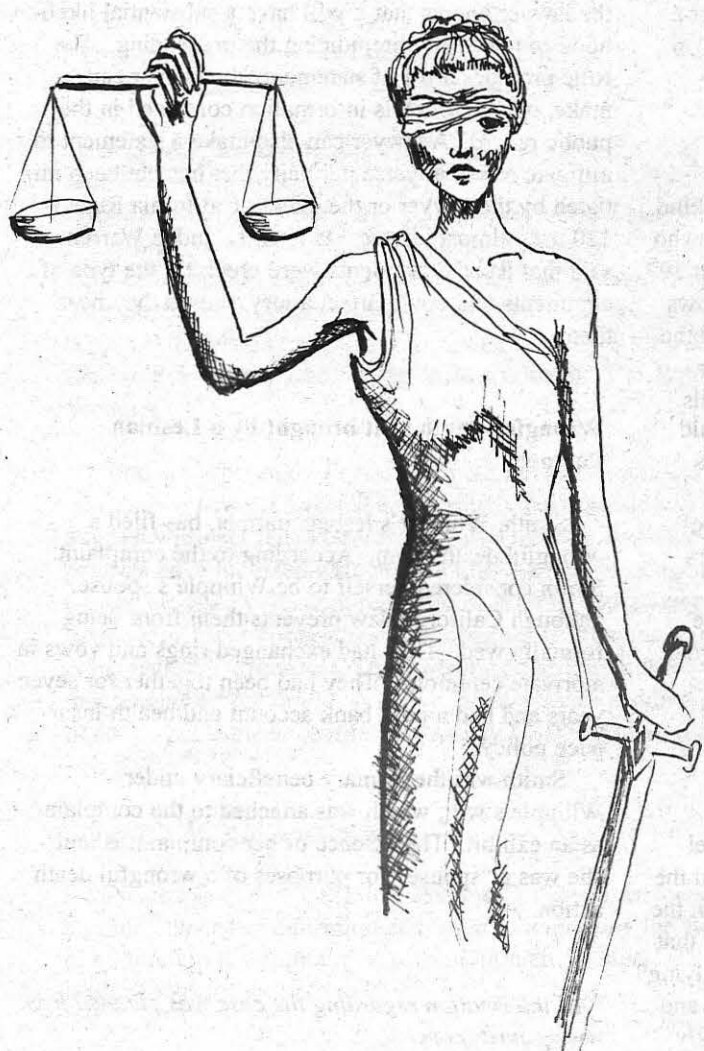
But is this necessarily a disaster for justice and democracy? Perhaps we have been seduced by an unrealistic conception of impartiality, of the goddess Justitia blindfolded and holding her sword and scales, a conception that simply refuses to recognize and acknowledge human nature. After all, judges are human; they are not robots or computers that will spit out an eminently predictable and perfectly consistent decision when the data of evidence are programmed into them. They bring their particular knowledge and experience—and their predilections and biases—to the bench, and armed with that equipment they preside over and determine the outcomes of cases that incorporate the wide range of human events and conflicts. The bonds of common humanity that link the judge to those who appear before her or him may well be a better guarantee of justice than a mechanical adherence to the authorities and precedents of the past.

So let the ideological battles begin! If the judge's decisions are going to be made—as indeed they are—on the basis of her or his policy preferences and ideology, then the Senate can properly examine those areas of the candidate's thinking. Too much is at stake to ignore ideology. Now that the Supreme Court hears so few cases, the District Courts and Courts of Appeal hand down decisions that are determinative and definitive in many areas of American life. Whether those decisions lean to

the left or to the right will depend upon the composition of the federal judiciary.

In the 12 years of the Reagan-Bush presidencies, many conservative judges were appointed, and, because those appointments are for life, we continue to see the consequences of the commitment of those judges to conservative ideologies. Because President Clinton made little effort to counter this situation during his administration, the Democratic-controlled Senate now sees it as its duty to examine rigorously conservative nominees such as Judge Pickering. As Senator Shumer (D-NY) said, "This is about maintaining balance on our courts."

Although the Judicial Branch is purported to be independent and apolitical, the fact that federal judges are appointed by a partisan President and approved (or not) by a partisan Senate means that the appointment process is highly political. The elected Executive and elected Senators want judges in place who will make decisions that promote the policies of the people who voted them into office—and this sounds like political democracy in action. But it would be nice if those at the pinnacle of the judicial system, the Justices of the U.S. Supreme Court, would stop pretending that their decisions are primarily the outcomes of the application of objective criteria to the facts before them, with little consideration of policy and, of course, with no fealty to ideology. A little candor would be refreshing.



Got an opinion?

**Agree/disagree with one of the
Opinion writers?**

Let us know!

Write us at MOTIONS by dropping off a letter or article in the MOTIONS box next to student mailboxes or email us at motions@sandiego.edu.

You can also reach us through the editor at cpangan@sandiego.edu

OPINION

Don't mess with Uncle Sam!

By W. Branch

Don't criticize the major powers, especially the United States, if you want to keep your job in the United Nations. Mary Robinson, the U.N. High Commissioner for Human Rights, recognized that hard truth on the eve of the Commission's 58th annual session recently in Geneva.

She had had the temerity to question the Bush Administration's conduct of the war in Afghanistan because of what she called the "disproportionate" number of civilians killed and wounded in the bombings by U.S. aircraft. And she had found fault with the handling of the detainees at Guantánamo Bay. Most recently Mrs. Robinson has suggested in her opening address to the Commission on March 20th that "counter-terrorism strategies pursued after 11 September have sometimes undermined efforts to enhance respect for human rights." This is not the kind of statement that sits well with the State Department.

So it is not a surprise when a senior Bush Administration official is quoted in the New York Times as saying, "We made it clear, quietly, our views that she shouldn't be renewed." The handwriting was on the wall for Mrs. Robinson to read, and in response she announced that she would not be a candidate to succeed herself in September. State Department spokesperson Richard Boucher greeted that news with a puerile and sarcastic envoi: "We wish her well in her future endeavors."

Even U.N. Secretary General Kofi Annan's response to Mrs. Robinson's announcement was somewhat reserved. While citing her "energy, creativity, and courage," he also noted that being a human rights advocate is the kind of work that makes enemies as well as friends. "Whatever you say offends somebody, but she brought her drive and application and integrity to the office, and she can leave in the full knowledge that she has made a major contribution." Mr. Annan expressed no interest in asking her to change her mind. But then, he has to continue to deal with those super powers, Russia and China along with the U.S., who were often the targets of Mrs. Robinson's criticisms.

"In order to defend the sacrosanct international human rights norms and standards we've established," Mrs. Robinson said, "it has been necessary and right to be critical if those standards are not being maintained. The fact that this irritates of annoys the United States or any other state—that's, I'm afraid, part of the job." And it will be someone else's job come September.

Her final introductory statement to the Commission on March 20 argued that "it is not sufficient to respond only to the immediate manifestations of violence; it is imperative to address the underlying conditions that lead individuals and groups to violence." Terrorism, she said, stems from hatred and generates more hatred.

Behind it is the assumption of the diminished humanity of the victims. A human rights approach, she went on to say, "affirms the richness of human diversity and respect for every human life. It offers an antidote to terrorism."

Sitting in the audience in Geneva that day was Ambassador Kevin E. Moley, head of the U.S. Observer Delegation to the session, "Observer" because for the first time in the history of the Commission the United States had lost its seat when the annual election took place last May. His published response was a point-by-point contradiction of Mrs. Robinson's stated preference for an international, human-rights-based approach.

As Ambassador Moley sees the issue, a commitment to human rights will not be a "compelling argument" for terrorists, who revile and exploit "societies that promote tolerance, pluralism and individual freedoms." While stressing "the continued, unshaken commitment of President Bush to the cause of human rights," he insists that individual states, not international organizations, are best able to address the problems of terrorism, humanitarian law, and security. And he warns the Commission against interfering with the President's plans for peace in the Israeli-Palestinian conflict:

Let me note my delegation's profound hope that at this moment of maximum peril in the Middle East this Commission will do nothing to inflame tensions but rather promote balanced resolutions that support the urgent efforts of President

Bush's Special Representative to bring violence to a halt.

In other words, sit down, shut up, and let the United States of America run the show. This we-know-best attitude, along with a commitment to exalted U.S. sovereignty and unilateralism, offends other nations and peoples around the world and contributes to the atmosphere of international tension and distrust that undermines the cause of peace and security. And if you don't do what the U.S. tells you to do, you may end up like Mary Robinson.



Diplomatic dilemma or clear path to peace?

By M.D.M. Crispin

The Palestinian Intifada started at the end of September 2000 following the visit of Ariel Sharon, a champion of the Israeli settlers' cause, to the Haram al-Sharif or the Temple Mount, a site captured by Israel during the 1967 War. Muslims perceived this as deeply provocative, and the deep frustration of Palestinian people exploded. The human cost of the tragedy that followed has been, and is likely to continue to be, utterly immense. This is not to say that the Palestinians are solely to blame. In fact, such a response is responsible for inflaming the conflict, and the Bush Administration is in danger of falling into that easy trap.

In a similar vein, George W. Bush's announcement, "Terror must be stopped. No nation can negotiate with terrorists, for there is no way to make peace with those whose only goal is death," reminds us that it is naive and unhelpful to bundle together the Mid-East crisis and the horrific attacks on the 11th of September. The very word "terrorist" has become a weapon for attacking organisations or people that are struggling for their cause by using the only means they believe to be effective: acts of violence. It must be remembered that deaths are suffered by both sides.

Personally, I find both suicide bombings and gunship assassinations morally repugnant. Some have said that the Israelis are being properly vigorous in their effort to destroy "the terrorist infrastructure." This approach is certainly achieving something. It is achieving the alienation of a new generation of Palestinians and, more widely, the entire Arab region. Israeli borders are made no more secure through military domination of the Palestinians. The sooner the international community can make Israel realise this, the sooner peace can be considered a realistic outcome. Only by respecting the dignity of the Palestinian people can progress be made. As the stronger and dominant party, and as the "only democracy in the middle-east," Israel must take the moral high ground and lead the region to peace.

ORIENTATION SESSIONS SCHEDULED FOR CENTER FOR PUBLIC INTEREST LAW/CHILDREN'S ADVOCACY INSTITUTE

Pre-registration for next year's courses is coming up soon, and students should be aware of two unique clinical opportunities offered at USD — the Center for Public Interest Law (CPIL) and the Children's Advocacy Institute (CAI). Students interested in CPIL or CAI should attend one of two orientation sessions scheduled for Wednesday, April 10 at 12:00 noon and 4:00 p.m. Each session will last 50 minutes, and will be held in WH 131.

Center for Public Interest Law

CPIL will soon be recruiting students interested in administrative, regulatory, consumer, and/or public interest law for a limited number of internships available during the 2002–03 academic year. Selected students are given the opportunity to observe the decisionmaking of administrative agencies, participate first-hand in the state's regulatory process, and to have articles they write published in the *California Regulatory Law Reporter*, the only legal journal of its kind in the nation.

Created in 1980, CPIL is an academic center of research, teaching, learning, and advocacy in public interest and administrative law. The Center focuses its efforts on the study of an extremely powerful, yet often overlooked, level of government — state regulatory agencies. These agencies and their federal counterparts regulate all aspects of business (including banking, corporations, insurance, and real estate), professions (including attorneys, physicians, accountants, engineers, and architects), trades (including contractors, barbers, and cosmetologists), the state's managed care system, and the environment (air and water quality, pesticide use, forestry, coastal resources, and waste management). An understanding of these agencies — how they work, the procedures they follow, their authority and jurisdiction, and the limitations on their powers — is an indispensable weapon in the arsenal of most attorneys, especially public interest attorneys.

CPIL offers two courses to USD law students: *Public Interest Law and Practice* and *Public Interest Law Clinic*. *Public Interest Law and Practice* is a four- or five-unit introductory course in which students study the substantive laws governing the functioning and decisionmaking of state administrative agencies. These laws include the "sunshine statutes" (which require most agency decisionmaking to take place in public and guarantee public access to most agency records) and the state Administrative Procedure Act, which governs the process agencies must follow to adopt regulations or take disciplinary action against the license of a licensee. Students also study important limitations on the power of agencies (including constitutional and antitrust limitations) and the functioning of the state legislature, which may enact, repeal, or amend the enabling acts of most agencies.

As part of the course, each student monitors two of California's major regulatory agencies, including the State Bar, the Public Utilities Commission, the Department of Insurance, the Medical Board, and Cal-OSHA, among many others. Students attend meetings of their assigned agencies, monitor and analyze their activities, interview agency officials and licensees, and track rulemaking, legislation, and litigation affecting their agencies. Twice during the year, students submit articles summarizing agency activities for publication in the *Reporter* (with attribution to the student author). The *Reporter* is reprinted on Westlaw.

Students who enjoy *Public Interest Law and Practice* frequently go on to take *Public Interest Law Clinic*, in which they may design their own writing or advocacy project related to regulatory or public interest law. In the past, these projects have included written critiques of agencies or agency programs; petitioning an agency to adopt regulations; drafting model legislation and testifying before legislative committees; participating in litigation to enforce the Administrative Procedure, Open Meetings, or Public Records Acts; and submitting *amicus curiae* briefs on public interest issues pending appeal. Student critiques of publishable quality may satisfy USD's written work requirement.

Children's Advocacy Institute

Created as part of CPIL in 1989, the Children's Advocacy Institute (CAI) is a public interest organization dedicated to improving the status and well-being of children in California by representing their interests and their right to a healthy, nurturing childhood.

CAI offers two courses at the USD School of Law to students interested in child advocacy: *Child Rights and Remedies* and *Child Advocacy Clinic*. *Child Rights and Remedies*, a three-unit course offered in the fall semester, surveys the broad array of child advocacy challenges: the constitutional rights of children, defending children accused of crimes, child abuse and dependency court proceedings, tort remedies and insurance law applicable to children, and child property rights and entitlements.

Taking or completing *Child Rights and Remedies* qualifies students to participate in *Child Advocacy Clinic*. Student clinicians have two options. First, they may choose to work with an assigned attorney from the San Diego Office of the Public Defender representing abused children in dependency court proceedings. In the past, students have worked on cases concerning an adolescent who was placed in foster care for three years after being abandoned by both parents and left with a substance-abusing older sister; an infant who was severely physically abused by her parents; or a young child who had been molested by his father. For a semester, students work two days per week at the Public Defender's Office; they are expected to participate in all aspects of their assigned cases, including court appearances, trial preparation, interviews of witnesses (including the child), and trying a case.

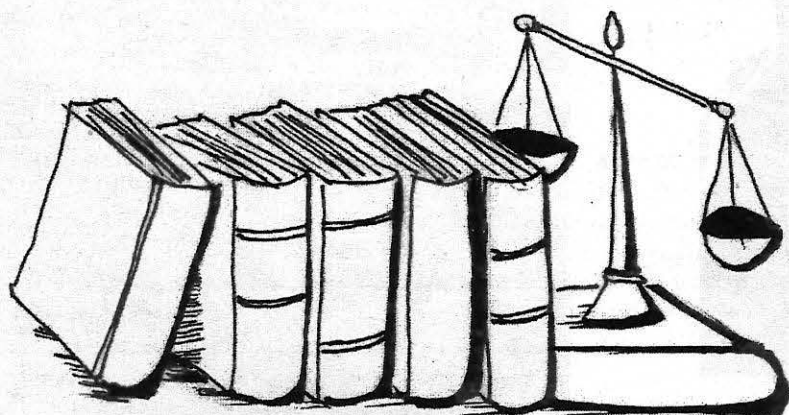
Child Advocacy Clinic interns have a second option — policy work with CAI professional staff involved in state agency rulemaking, legislation, test litigation, or similar advocacy. In the past, these policy projects have included the filing of a lawsuit to force a state agency to adopt public playground safety regulations; legal research supporting foster care reform legislation sponsored by CAI; or legal research and writing on the California Children's Budget, an annual publication of the Children's Advocacy Institute which tracks state spending on programs affecting children. Students may also opt to perform research and writing for the *Children's Regulatory Law Reporter*, a semiannual journal highlighting child-related decisions made by California regulatory agencies.

Through these projects, students can make an impact on public policy before graduating from law school. For example, in 1994, Clinic intern Susan Duke conducted a statewide survey of all 58 California counties to ascertain what qualifications are required of attorneys who represent minors in dependency proceedings. Duke issued her findings in a report, which was the basis for successful legislation sponsored by CAI assuring qualified counsel for children. That legislation was recently upheld by the Second District Court of Appeal, which cited Duke's study as support for its decision.

All of the courses offered by CPIL and CAI expose law students to important sources of law which are not covered in most other law school courses — state legislatures, state administrative agencies, and local governing bodies. As these governmental fora become more active in making law, attorneys must know how to navigate their processes on behalf of their clients or constituencies.

Both CPIL and CAI were founded by Professor Robert C. Fellmeth, a former "Nader's Raider" consumer advocate, Deputy District Attorney, and Assistant U.S. Attorney. Professor Fellmeth holds the Price Chair in Public Interest Law — the School of Law's first endowed faculty chair. According to Professor Fellmeth, perhaps the most promising aspect of CPIL/CAI scholarship and activity has been the entry into state regulatory agency staffs, legislative committee staffs, and public interest advocacy groups of a large number of CPIL/CAI interns following graduation. "Our graduates include the executive director of one of the nation's largest utility ratepayer advocacy groups; a senior attorney in the General Counsel's office of the state Department of Insurance; the former director of Project Heartbeat, a groundbreaking San Diego initiative to improve mental health services for children; a senior official at the state Health and Welfare Agency; and the former chief consultants to both the Senate and Assembly Judiciary Committees. We offer experience and education in areas outside the conventional private practice of law — areas in which the student/practitioner can make a difference in public policymaking."

News from the LRC



Lab Card Readers Get an Update

The USD Print Shop is working with Electronic Services in the LRC to replace all the old card readers in the lab with new, networked readers. These new readers look very similar to the older boxes but the internal mechanisms for inserting a card and reading it are greatly improved. The router boxes and cables can also be removed from the printers because the new readers operate over the network.

If all goes well with the product's demonstration, new card readers should be in place by early summer. Please contact Owen Smith in the LRC (osmith@SanDiego.edu) or Michael O'Cull in the Print Shop (ocull@SanDiego.edu) if you have questions.

The USD Legal Clinic will be holding an Informational Meeting on April 11, 2002 at noon in WH131.

The meeting will introduce all of the different clinics offered by the USD Legal Clinics - Civil, Tax, Immigration, Small Claims, Environmental, Land Use, Mental Health, Criminal, Prospectives in Criminal Justice and Entrepreneurship. We will also be discussing the application process and requirements for the Summer and Fall 2002 semesters.

The USD Legal Clinics offer law students the opportunity to interview clients, prepare court documents and represent clients in court in actual court cases.

Free pizza and soda will be provided.

If you have any questions, call Jesi Betancourt at USD Legal Clinic 619-260-7470 or come by Alcala West, Suite 305.

Joke Corner

Donkey Raffle

From a forwarded e-mail
from Professor Kelly to
the Remedies class.

An Enron Trader moved to Texas and bought a donkey from an old farmer for \$100. The farmer agreed to deliver the donkey the next day. The next day, the farmer drove up and said, "Sorry, but I have some bad news. The donkey died."

"Well, then, just give me my money back."

"Can't do that. I went and spent it already."

"OK, then. Just unload the donkey."

"What ya gonna do with him?"

"I'm going to raffle him off."

"You can't raffle off a dead donkey!"

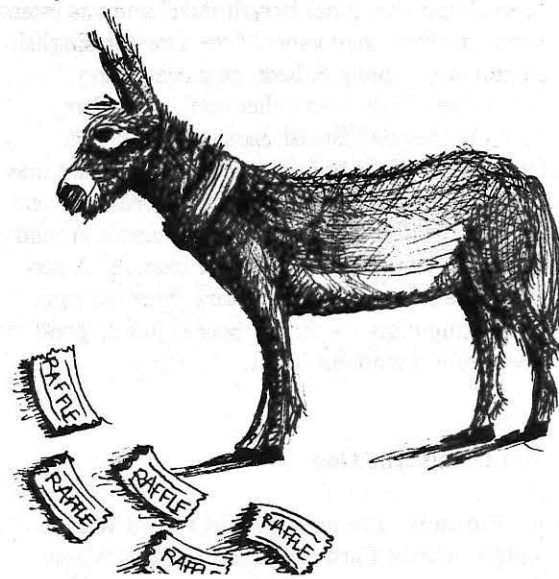
"Sure I can. Watch me. I just won't tell anybody he's dead."

A month later the farmer met up with the Enron Trader and asked,
"What happened with that dead donkey?"

"I raffled him off. I sold 500 tickets at two dollars a piece and made a profit of \$898."

"Didn't anyone complain?"

"Just the guy who won. So I gave him his two dollars back."





FOOD



Dining in HILLCREST

By Two Chicks With Multiple Credit Cards

Another Sob Story

"But it's due on Friday!" whines Girl Friend With Large...Credit Card Debt. On Monday night. "You have toooooo!" Cripes. When the blazes am I going to have time to do a restaurant review this week?! I have kickboxing on Tuesday, a date on Wednesday (he's a HOTTIE so canceling is NOT an option), and HER winetasting party on Thursday. And somewhere in the middle of all that, I'm supposed to prepare for a trial, go gourmet food shopping for HER party AND go out to dinner and write a review by Friday?! Impossible! I'll just have to tell her that I can't do it. She'll understand, right? We're both reasonable, mature women, right? "But you promised!" *sigh* Fine. So on Tuesday evening (after kickboxing), I dragged my sorry soon-to-be-in-shape heinie over to Shakespeare's Pub & Grille in Hillcrest. For fear that if I don't, she's gonna tell my mommy on me.

Shakespeare's Pub & Grille is on India Street in the Mission Hills/Hillcrest area, right off the Washington Street exit from the 5 freeway. You can actually see the outdoor deck from the freeway so you can't miss it. Look for the red sign marked "BRITISH PUB" hanging from the roof. You can also see the British flag flying from the rooftop.

Established in 1990, Shakespeare's is coined as "San Diego's Original British Pub," and has established itself as "purveyors of the finest in English gastronomy — pints of beer, chips and gravy." (For those of you who either don't read Harry Potter or frequent British bars, chips = french fries.) The drinks are strong, the portions are massive, and the check won't make your palms sweat and your bottom lip quiver as you fumble around the lint in your pockets for loose change. A perfect place to unwind after getting thrashed from kickboxing class. After all, beer is just as good as water after a workout, right?

Act One, Scene One

I'm early. I'm meeting Girl Friend With Large...Credit Card Debt (and Frickin' Whiny Voice), her cute cousin Mike, and our very best guy friend Adam*, who just so happens to be in love with everything British (especially the ladies). But I'm early. Gee, I guess I could wait outside for them.... I'm not thinking so! Hey, I just worked out, I need to replenish my fluids.

The entrance to this place is a bit hidden, but all you have to do is look for the bright red phone booth. It's one of those step-inside-and-close-the-door phone booths, and the entrance is right next to it. If it looks like you're going in a side door because you're in a small hallway with bathrooms on one side and a kitchen entrance on the other, then congratulations you just found yourself the front entrance. Keep walking straight, you'll stumble right in. Tables line the walls, the bar-

tender's home is in the right corner, and the doors to the outdoor deck are straight ahead and on the left. And I guarantee you'll pass by some delicious eye candy on your way to wherever you end up.

I grabbed a table for four right by the window, sat back to wait for my friends, and surveyed the room. The entire pub is made up of dark wood — the floors, tables, chairs, even the bar. Old soccer balls and trophies line the shelves, and old pictures of pubs, shops, and even old advertisements line the walls. Ever hear of Andrews' Liver Salt?

But soft, what ale through yonder window breaks...

The bar at Shakespeare's takes up one corner of the pub, and a rectangle mirror with "GUINNESS" written on it hangs from one of the walls. The bar itself isn't very big, but glasses hang from every nook and cranny available and it's stocked with just about everything that you think might taste good. The wine list is okay, maybe a bit limited, offering only five whites and five reds, but at \$4.95 a glass, or \$19.95 a bottle, who's complaining? Shakespeare's also offers sherry and port, Kenwood champagne, and six single malt whiskies from Scotland. Try the Glenkinchie (smooth and dry), the Dalwhinnie (fruity, sweet, light taste) or the Cragganmore (dry and firm).

And, finally, there's the pièce de résistance... an entire page of the menu is dedicated solely to beer. Ladies, this is where to take your man on a date to show how much you care. Shakespeare's has 11 beers on "draught" (draft), so you can probably figure out why I don't remember how much they cost. The creamy black Guinness Stout leads the selection, followed by a couple different types of ales: Bass, Newcastle, and Fuller's India Pale Ale. Also offered is the popular Harp Lager (#1 lager in Europe) and Tennents Lager (Scotland's best seller). For the more adventurous beer drinkers, Shakespeare's also has a selection of mixed beer drinks. Try a Snakebite (a 50/50 mixture of lager and cider), or the delicious Shandy (1/2 lager, 1/2 7-Up), a Black Velvet (Guinness and Champagne), or a Poor Man's Velvet (Guinness and Cider). For the more traditional folk, there's always the good ole Black & Tan (Bass Ale on the bottom and Guinness on top), as well as your standard imported and domestic bottled beers.

For those who don't care to indulge in one of the many beers offered, and who may prefer their drinks a bit lighter, also available is the Strongbow Apple Cider (dry and fruity), and the Hooper's Hooch (orange or raspberry flavors, somewhat similar to wine coolers).

Shakespeare's also has an extensive drink collection for those, uh, "individuals," who prefer non-alcoholic drinks. O'Douls Amber (non-alcoholic beer, a concept I just can't seem to grasp), British sodas, American sodas, juices, and, of

course, the traditional British cup of tea (you can get just a cup, or even a whole pot). Mike had some mixture of lemonade and iced tea that he said was good, so maybe try that one too.

Blimey! It's England... in San Diego

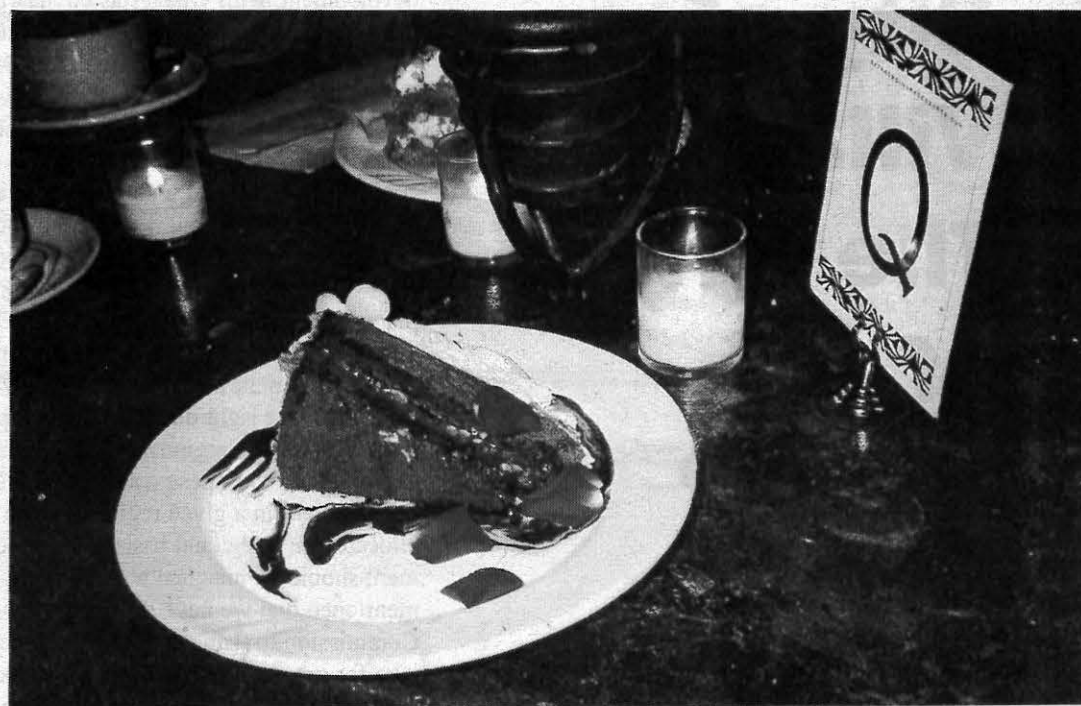
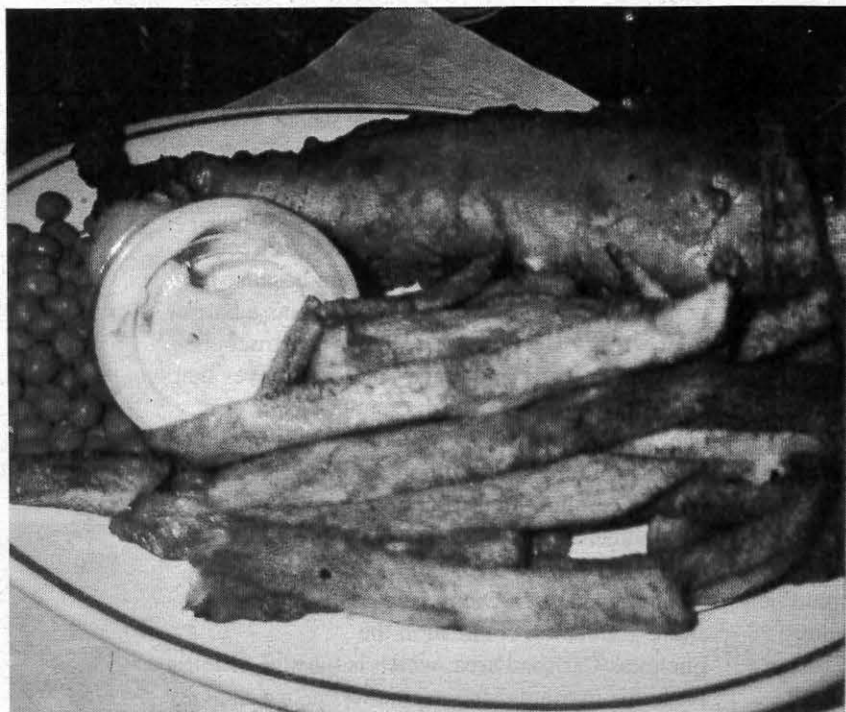
One of the first things you notice when you walk into Shakespeare's is how casual and friendly everyone is. This is a neighborhood pub, not a fancy, trendy restaurant. Don't dress to impress here, dress to kick back with a beer, some fish and chips, and chill with your friends, or maybe watch the game on one of the three TVs. Soccer games are showed via satellite the whole season, and the Padres were on TV when we were there (don't EVEN get me started on them!). You don't have to talk quietly here either, get as loud and as raucous as you want, nobody cares! If you want it a little bit quieter though, then you should go outside on the deck. There's a lot of room out there, and it handles overflow from the inside room quite well, especially Friday and Saturday nights. It's been cold at night lately though, so make sure you get a table near one of the heaters if you decide to stay outside.

I, however, being the first to arrive, deemed that we shall remain indoors this evening. Of course that decision had absolutely nothing to do with the fact that the table I chose was within direct eye contact range with several, shall we say, rather attractive people. Okay, fine, hot guys. But just as eye contact commenced, in walked my very best guy friend ever Adam. Great! How lovely to see him! (grumble, grumble). But now that he was here, we could get down to the business at hand. The menu.

Traditional British fare

We were still waiting for two other people, but should that little fact stop two hungry souls who got there on time from ordering a couple appetizers? Of course not! So we decided to share the Jumbo Sausage Roll (\$3.95) and a Banger on a Roll (\$3.95). The Jumbo Sausage Roll is an English sausage wrapped in puff-pastry (kind of like a croissant) and then oven-baked. The Banger on a Roll is the English version of the hot dog. It features a sausage split in half, covered with grilled onions, and sandwiched in between a bread roll. Both were reasonably okay, but a bit bland.

Our other two friends arrived in time to taste both of them and they also thought that there wasn't that much flavor. We added ketchup to spice up the flavor a little bit, but beware of the hot mustard! It's very spicy and, trust me, beer doesn't help very much when your tongue is burning! These two appetizers weren't bad, but they lacked distinct flavors. Other appetizers offered, under the menu heading of "Pub Grub," are a mound of fresh cut chips (\$3.25), a plate of hazelnut and



chicken paté with toast (\$5.95), and a Scotch Egg (\$3.95), a hard-boiled egg covered with sausage meat, rolled in bread crumbs and served cold with a pickle. I chickened out on trying that one.

Shakespeare's offers traditional British entrées as well, including their house specialty — Fish and Chips (\$10.95). This dish is the most popular on the menu. It's a seven-ounce filet of cod cooked in tempura batter and served with chips and peas. It is unlike many other plates of fish and chips in that the batter doesn't overpower the fish, it's actually very light and not at all oily. The fish is cooked in cholesterol-free canola cooking oil, so just look at this dish as being quite healthy for you! Remember, drinking water or fat-free soda after eating fatty foods washes out all the calories and fat grams consumed. Yeah right.

Another entrée that we chose was the Bangers and Mash (\$10.95), three pork sausages floating in gravy and grilled onions and served with peas and mashed. The sausages were the same type used in the appetizers, so they were a bit on the bland side, but combined with the gravy and the grilled onions (and some added salt), it wasn't bad! The mashed potatoes were somewhat watery though, even with the gravy mixed in, and just couldn't be saved, but the peas were very good. And I don't even like peas! Usually I think they're nasty and mushy, but these were very crisp and fresh.

Girl Friend With Large...Credit Card Debt selected chicken curry (\$10.95) as her entrée and it was massive. Out came a huge mound of chicken, carrots, peas, chips and rice. The curry flavor was pretty light, but the flavor of everything mixed together was pretty good! Not quite as flavorful as chicken curry from an authentic Indian restaurant, but it wasn't bad.

The final entrée selected was the Krab Cakes, served with chips and peas, and they were almost as good as the fish and chips. Or maybe I just really liked the tartar sauce...no, they were good! They were creamy and not oily at all, and once again, the portion size was huge.

Shakespeare's offers several other traditional dishes such as Shepherd's Pie (\$10.95), marinated ground beef covered with mashed potatoes and melted cheese. Like many other dishes, chips and peas are served on the side. I had this dish the first time I came to Shakespeare's, and it was somewhat bland. I added salt and ketchup to it to add more flavor, and that helped quite a bit, but the blandness was still evident.

Other entrées available are: Steak & Mushroom Pie (\$10.95), steak and mushrooms cooked in a red wine sauce topped with pastry; Steak & Kidney Pie (\$10.95), same thing just made with kidney beans instead of mushrooms; Gammon Steak (\$10.95), a ham steak topped with either pineapple or a fried egg; Chicken Pot Pie (\$10.95); Veggie Pot Pie (\$9.95); and the Ploughman's Plate (\$8.95), slices of Monterey Jack and cheddar cheese with two slices of Scotch Egg, a bread roll, pickled onions and a pickle.

On Sundays, a traditional British Sunday lunch is offered consisting of roast beef, roasted and mashed potatoes, fresh vegetables, gravy, and Yorkshire Pudding, all for \$10.95. I think I'll try it one day, I've always wanted to find out what Yorkshire Pudding is....

SAYING NO TO DESSERT?!

Yes. Sort of. Well, just saying no to dessert here. But someone try them and let me know! Several desserts are available, all for \$4.25, including sherry trifle, carrot cake, chocolate éclairs and apple dumplings. You can add vanilla ice cream for an additional \$1.00. But I do have to come back here to at least try a coffee drink! The signature Shakespeare coffee drink has cointreau (orange liqueur), Dark Crème de Cacao (vanilla and cocoa bean flavor), coffee and cream. Yum!

We all pass on coffee and dessert though because we're about to head on over to Fifth Avenue and partake in several extraordinary desserts at, where else? Extraordinary Desserts, a dessert café located at 2929 Fifth Avenue in Hillcrest.

This dessert has been brought to you by the letter "Q"...

If you've never been to Extraordinary Desserts, it's essential that you make time to try it. This little café has much more to offer than just beautiful, delicious desserts. It's a gateway to faraway places and exotic lands. The owner of the café, Karen Krasne, is a dessert chef trained in Paris, who has decorated this spot with mementos from her travels throughout the world. She believes that "food is best enjoyed as a reflection of culture," and has added flavors she discovered throughout her travels to her dessert creations.

Everything from the exotic design of the desserts to the eclectic range of music in the background to the exotic jewelry hanging in a display case on the wall is meant to enhance the experience of her creations for her customers. Her goal is to enable her clients to "lose themselves completely in the sweet sensuality of it all...by creating an enchanting mood with the flavors and unique artistry of faraway places."

Extraordinary Desserts has a homey, relaxed atmosphere. It's all-inviting — you can go there after the theater in your finest evening wear, or you can go there in clothes you just wore to a British pub, it just doesn't matter. The line to get to the display cases and the register where you order and pay can run out the door on a Friday or Saturday night. But just relax, chat with each other or the people around you, and take turns sneaking up to the display case to gaze at everything available, or simply put your arms around the one you love and listen to the music in the background.

The offerings here are beyond the imaginable. Imagine, if you will, chocolate cake layers soaked with Tuaca, surrounded by chocolate mousse and homemade caramel, and covered in bittersweet chocolate and 23 $\frac{3}{4}$ kt gold leaf. Or layers of hazelnut almond cake, white chocolate buttercream, raspberries and a nut meringue, topped with a lattice design of roasted nuts and raspberry preserves. Or even vanilla crème brûlée, chocolate mousse and chocolate truffle cream layered in between dark chocolate cake and moistened with Madagascar vanilla bean. Or perhaps you would prefer something less elaborate, such as a napolean, a brownie, a french apple tart, a double

chocolate orange nut cookie, or even a scoop of ice cream or sorbet. And perhaps with your dessert, you would enjoy a hazelnut latté, a mocha, a Hawaiian coffee, a pot of tea, or perhaps even a tall glass of cold milk.

This café has something for everyone, from those who accept only the most fanciful to those who accept only the simplest things in life. If you choose to sit indoors, then you'll sit with views of jewelry baskets, Japanese tea pots and other accessories, incense, jars of homemade chocolate and caramel sauces, homemade preserves, even sugar-free chocolate, clothing and purses. If you prefer the outdoors, then you'll sit at a table bathed in candlelight, with heaters to keep you warm, and relaxing music to ease the mind and spirit. When our group was there, we heard such a range of different types of music: chanting, reggae, rap, New Age... a bit of everything is available for all sorts of tastes.

When you make your way to the front of the line and give the person at the register your order, you'll be given a laminated letter attached to a little stand. Keep this letter in plain sight, for that's how your coffee and desserts will find you. Our desserts were brought to us by the letter "Q." We feasted on the carrot cake, a cheesecake tart with cream and raspberries mixed in, a German chocolate cake with a layer of crème brûlée, and chocolate mousse surrounded with pistachios. Our total bill for four slices of cake, three coffees and a glass of milk totaled a little under \$40.00. Worth the experience, I guarantee it.

Out, out brief candle...

On this second time out, Two Chicks with Multiple Credit Cards, and their two gentlemen friends, were quite content with their dining experiences. Shakespeare's Pub & Grille is a great place, but great because of the atmosphere and the drinks, not necessarily the food. All in all, the food, except the fish and chips, was a bit bland, but don't worry about it! Go there, grab a few drinks, a mountain of chips and just unwind from the day. You'll leave there with new friends, or at least a few good stories about everything you saw there. Parking can be challenging, especially on the weekends. And don't even think of parking in the El Indio parking lot, or you'll get towed faster than you can say, "But here's 100 quid..."

Extraordinary Desserts is extraordinary in its own right. In an age where personal wellness is of a foremost focus in our lives, yet time to concentrate on such an arena is sparse, places such as these enable us to concentrate on ourselves, all the while enjoying dessert masterpieces! I give you permission to break the diet and indulge just this once! At least go take a look at the display case where you'll see cakes covered with ribbons, petals, gold leaf... dessert treats fit for royalty. Or go there for an hour with a book and a pot of tea and just enjoy the music. Two Girls with Multiple Credit Cards could be there for hours, I kid you not, just eating, drinking and talking at nice, candlelit table. Alas, so little time and so many things to do.... such as write this article...

City of Villages: The Future of San Diego?

By Tom Ladegaard
Section Editor

When Professor Richard Wharton came to San Diego from the East Coast in 1970, San Diego was a much different place. He lived in a house in Pacific Beach near the water, paying \$150 rent, and the city population was 600,000. Today that number has more than doubled. He says that Qualcomm Stadium could be filled with the influx of just one year's growth. In one disturbing way San Diego has not changed from 1970 — it has virtually the same freeway system.

On March 13 the Environmental Law Society presented the 3rd Annual Environmental Law Conference: "Urban Growth: How Should We Face the Challenge?" Panelists included Corky Wharton, director of the USD Environmental Clinic, Garry Papers, architect from the Urban Land Institute, Duncan McFetridge, founder of Save Our Forests and Ranchlands (SOFAR), and David Long, city planner from the City of San Diego.

Long, of the city planning department, presented the City of Villages project, a plan to improve the quality of life in San Diego. It emphasizes compact, efficient, and environmentally sensitive

development, with villages as the heart of transit-oriented, pedestrian-friendly communities. The project is a response to many of San Diego's needs: less than 10% of land remains vacant, housing costs are up, mobility is strained, and there is a lack of public facilities. San Diego will continue to grow, and with or without the City of Villages plan, there will be a \$2.5 billion tax shortfall this year, for this has historically been a city with low tax income. The decisions city planners make today "will affect San Diego for generations to come," according to Long.

Wharton believes that the City of Villages plan is a step in the right direction. He proposes that there should be a regional planning authority with authorization to impose a moratorium to curb development in a given region, growth should be allocated on a regional basis, and that employment should be matched with housing. Wharton mentioned that we have the California Coastal Commission to thank for the beach access that we take for granted. In New Jersey, for example, a fee is charged for beach access, and no parking or public showers are provided.

Moreover, in San Diego there is a 30' height limitation on coastal property, which is the reason why the ocean is visible at all. This initiative was passed as soon as the Capri Hotel was constructed in Pacific Beach, when residents feared that San Diego would become the next Miami Beach.

Papers maintains that urban sprawl is negative only when it goes unchecked, for an economy needs to grow. One reason he supports the City of Villages plan is its aesthetic value, for it would give the communities a distinctive feeling. He asked us to think of a typical ugly and repetitive city — the only way you would know you are in a new community is when the franchises start to repeat. (Exception: two Jack in the Boxes and two Taco Bells exist in Pacific Beach.) Citing the Tragedy of the Commons, he said we have to work together if we are to preserve our resources. Rising prices are not necessarily a bad thing, for it is a sign that we value the land, but it becomes a problem when people cannot afford to live in the communities they work in. He advises that the

City of Villages program use care and precision so as not to harm that which already works well. He envisions communities that bring the residents together, and that happens only when communities are centralized, not linear, or stretched out.

McFetridge is pessimistic about the effectiveness of the City of Villages program because he believes that political corruption remains a barrier to progress. McFetridge, a former construction worker, carpenter and home builder, believes that cities, like buildings, need a foundation or else they will fall apart. The foundation of a city is the infrastructure. A city without an infrastructure will have pollution, traffic, housing crises, and environmental crises. He cites Portland, Oregon as the model for a city with a foundation. He maintains that San Diego is wasting land, for the entire population could fit in the Encinitas/Carlsbad area, which is the size of Paris. With this in mind, McFetridge warns that the City of Villages plan will fail without urban growth boundaries.

MOTIONS Wants YOU!

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information.**

>HOAX

CONTINUED FROM PAGE 1

When asked under which section of the penal code he would prosecute this crime, should this crime have been committed in San Diego, Jimenez responded that Section 422 would be the appropriate charge. Section 422 makes unlawful the act of willfully threatening to commit a crime which will result in death or serious bodily injury, with the specific intent that the statement is to be taken as a threat, even if there is no intent of carrying it out. The threat must be so unequivocal, unconditional, immediate, and specific that an immediate prospect of execution of the threat exists.

Governor Gray Davis issued a statement in regards to the hate mail, promising that the perpetrators will "answer to the strongest anti-hate laws in the country."